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PART 1:

16.7.3.5.45 Nonconforming Structures Repair and/or ~~Enlargement~~Expansion.

A. A nonconforming ~~building-structure~~ may be repaired or maintained and may be ~~enlarged-expanded~~ in conformity with the dimensional requirements, such as setback, height, etc., as contained in this Code. If the proposed ~~enlargement-expansion~~ of a nonconforming ~~building-structure~~ cannot meet the dimensional requirements of this Code, the Board of Appeals ~~or the Planning Board~~ (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone) will review ~~such a repair and/or expansion~~ all applications and may ~~approvegrant permission for such~~ proposed changes provided the ~~changes~~. ~~In reviewing all such applications for enlargement or repair, the Board of Appeals will use are no more non-conformingnonconforming than the existing condition and the Board of Appeals or the Planning Board~~ (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone) makes its decision per section ~~the criteria established hereinin-16.6.6.2.~~

B. If the proposed ~~expansion enlargement~~ of a structure is: (1) a vertical ~~expansion enlargement~~ that follows the existing building footprint and (2) will not result in setbacks less than those already existing, approval ~~by~~of the Board of Appeals is not required ~~if the structure is not located in a Shoreland Overlay or Resources Protection Overlay Zone~~. Applications for such development will be reviewed and may be approved by the Code Enforcement Officer ~~or the Planning Board~~ if the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone. This subsection does not apply to any proposed vertical expansion of a patio, deck or accessory structure permitted to be closer to a water body or to a principal structure in accordance with Table 16.9 – Minimum Setbacks from Wetlands and Water Bodies.

C. Except in the Residential - Village (R-V) zone, minimum setbacks of ~~detached-residential storage sheds that are less than one hundred-andtwenty-one (101-121) square feet and detached-one-story residential garages that are less than five hundred and seventy-seven (577) square feet , and decks less than two hundred fifty-one (251) square feet~~, may be one-half the minimum rear and side yard setbacks providing the lots are legally nonconforming.

PART 2:

Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS

~~16.7.2.6 Single Noncontiguous Lots.~~

~~In any district, notwithstanding limitations imposed by other sections of this Code, single noncontiguous lots legally created when recorded may be built upon consistent with the uses in the particular zone. These provisions apply even though such lots fail to meet the minimum requirements for area or width, or both, which are applicable in the zone, provided that yard dimensions and other requirements, not involving area or width, or both, of the lot conform to the regulation for the zone in which such lot is located. Relaxation of yard and other requirements not involving area or width may be obtained only through miscellaneous variation request to the Board of Appeals.~~

16.7.2.76 Averaging Building Setbacks.

Building setback from the street line need not be greater than the average of the setback distances of the buildings on the lots next thereto on either side.

Article III. Nonconformance

16.7.3 Purpose.

The purpose of this Code is to promote land use conformities. The purpose of this Section ~~Article~~ is to regulate nonconforming lots, uses, and ~~buildings~~ structures.

16.7.3.1 Prohibitions and Allowances.

A. Except as otherwise provided in this Article, a ~~non-conforming~~ nonconforming condition must not be permitted to become more ~~non-conforming~~ nonconforming.

B. Nonconforming vacant lots of record may be developed, maintained or repaired.

C. Nonconforming uses may continue, may be changed to an equal or more appropriate nonconforming use, or be changed to a conforming use.

~~D. When the nonconforming use ceases for any reason, for a period of one (1) year or more, the purpose of this Code is not to allow it to be re-established.~~

16.7.3.2 Transfer of Ownership.

Legally Nonconforming structures, lots, and uses may be transferred, and the new owner may continue the nonconforming use or continue to use the ~~non-conforming~~ nonconforming structure and/or lot, subject to the provisions of this Code.

16.7.3.3 Repair and Maintenance.

This Code allows the normal upkeep and maintenance of nonconforming uses and structures including repairs or renovations that do not involve expansion of the nonconforming use or structure that is not otherwise permitted by this Code, and such other changes in a nonconforming use or structure as Federal, State, or local building and safety codes may require.

16.7.3.4 Discontinued Resumption Prohibited.

A lot on, or structure in, which a nonconforming use is discontinued for a period exceeding one (1) year, or which is superseded by a conforming use, loses its status as a nonconforming use. The uses of the land or structure must thereafter meet the provisions of this Code. This provision does not apply to the resumption of a use of a residential structure where it can be demonstrated that the structure has been used or maintained for residential occupancy during the preceding five (5) year period.

16.7.3.54 — Types of Nonconformance.

16.7.3.54.1 Continuance of Non-Conforming Nonconforming Use Continuance.

The use of land, or structure building, lawful at the time such building or use or structure was created, may continue although such building or use or structure does not meet the provisions of this Code.

16.7.3.54.2 Expansion of Non-Conforming Nonconforming Use Expansion.

Expansions of nonconforming uses are prohibited, except nonconforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in Section 16.7.3.4.43. Non-Conforming Nonconforming Residential Use in Commercial Zones Expansion.

16.7.3.4.3 Enlargement of Nonconforming Use of Land.

A nonconforming use of land may not be enlarged to cover more land by said use when it became nonconforming, except that nonconforming residential uses located within the Resource Protection Overlay, or Shoreland Overlay Zone with Planning Board approval, may expand by thirty (30) percent or less of the structure, in floor area or volume, during the lifetime of the structure if the applicant can prove the proposal is consistent with the review standards in Section 16.3.2.17D.2.

16.7.3.45.4.3 Enlargement Expansion of Non-Conforming Nonconforming Residential Use in Commercial Zones Expansion.

Notwithstanding the above limitations on expansion/enlargements of nonconforming use, a nonconforming residential use located within the Commercial zones may be enlarged/expanded. Where the expansion of the residential use involves an expansion of a structure, the structure must be expanded in conformity with the dimensional requirements contained in this Code. If the proposed structure expansion/enlargement of a nonconforming residential use in a commercial zone cannot meet the dimensional requirements of this Code, then the application must be submitted to the Board of Appeals for review as a Miscellaneous Variation Request. In reviewing all such applications, for enlargement, the Board of Appeals must use the criteria established herein, and then may grant permission/approve for such proposed changes/dimensional requirement variations.

16.7.3.4.5 4 Resumption Prohibited.

A lot, building or structure, in, or on which, a non-conforming/nonconforming use is discontinued for a period exceeding one (1) year, or which is superseded by a conforming use, loses its status as a nonconforming use. The uses of the land or building structure must thereafter meet the provisions of this Code. This provision does not apply to the resumption of a use of a residential structure where it can be demonstrated that the structure has been used or maintained for residential occupancy during the preceding five (5) year period.

16.7.3.5.25.54 Nonconforming Structure Relocation.

A. A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all dimensional requirements to the greatest practical extent as determined by the Board of Appeals or Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone), and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules, or that a new system can be

installed in compliance with the law and said Rules. In no case may the relocation of a structure be permitted that causes the structure to be more nonconforming. See Chapter 16.8, Article VII, for other specific requirements related to septic waste disposal systems.

B. In determining whether the structure building relocation meets the setback to the greatest practical extent, the Board of Appeals or Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone.), must consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

C. When it is necessary to remove vegetation within the water or wetland setback area to relocate a structure, the Board of Appeals or Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone.), may require replanting of native vegetation to compensate for the destroyed vegetation, and may restrict mowing and pruning of the replanted native vegetation to encourage a more natural state of growth. Replanting will be required as follows:

1. Trees removed to relocate a structure must be replanted with at least one native tree, six (6) feet in height, for every tree removed. If more than five trees are planted, no one species of tree can be used to make up more than 50% of the number of trees planted. Replaced trees must be planted no farther from the water or wetland than the trees ~~that were~~ removed.

2. Other woody and herbaceous vegetation and ground cover that is removed, or destroyed, to relocate a structure must be reestablished. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of ~~similar~~ native vegetation and/or ground cover similar to that was disturbed, destroyed or removed.

3. Prior to the commencement of onsite construction, areas to remain undisturbed must be clearly marked with stakes and caution tape. Removal of the stakes, caution tape, silt fences, and such other materials used during construction, is required at the completion of the onsite work, but not before permission to remove such has been given in writing by the Code Enforcement Officer.

4. Where feasible, when a structure is relocated on a parcel, the original location of the structure must be replanted with vegetation consisting of grasses, shrubs, trees or a combination thereof.

~~D.E. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure may be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation will be replanted in accordance with Section 16.7.3.4.54.C. Nonconforming Structure Relocation. If the reconstructed or replacement structure is less than the required setback it must not be any larger than the original structure, except as allowed pursuant to Section 16.7.5.3.1 above, as determined by the nonconforming floor area and volume of the reconstructed or replaced structure at its new location. Nothing in this Section prevents the Code Enforcement Officer from issuing Application for a demolition permit for the remains of any building structure that has been partially damaged or destroyed must be made to the Code Enforcement Officer.~~

16.7.3.5.5 Nonconforming Structure Reconstruction.

A. Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, by any regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the

date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board (in cases where the structure is located in a Shoreland Overlay of Resources Protection Overlay Zone) or Code Enforcement Officer, in accordance with this Code.

B. In no case will a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it may not be any larger than the original structure, except as allowed pursuant to Section 16.7.3.4.6, Nonconforming Structures Repair and/or Expansion, as determined by the nonconforming floor area and volume of the reconstructed or replaced structure at its new location.

C. If the total amount of floor area and volume of the original structure can be ~~relocated or~~ reconstructed beyond the required setback area, no portion of the ~~relocated or~~ reconstructed structure may be ~~replaced or~~ reconstructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation ~~in order to replace or~~ reconstruct a structure, vegetation will be replanted in accordance with Section 16.7.3.4.54.C, Nonconforming Structure Relocation. If the ~~reconstructed or replacement structure~~ is less than the required setback it must not be any larger than the original structure, except as allowed pursuant to Section 16.7.5.3.1 above, as determined by the nonconforming floor area and volume of the reconstructed or replaced structure at its new location. ~~Nothing in this Section prevents the Code Enforcement Officer from issuing Application for a demolition permit for the remains of any building structure that has been partially damaged or destroyed must be made to the Code Enforcement Officer.~~

BD. Any nonconforming structure ~~damaged or destroyed by any cause through no fault or action by the owner,~~ which is located less than the required setback from a water body, tributary stream, or wetland and removed, damaged or destroyed by any cause through no fault of action by the owner by 50% or less of the market value, ~~or damaged or destroyed by 50% or less of the market value of the structure before~~ such damage, destruction or removal, which is hereafter damaged or destroyed by fire or any cause, ~~through no fault or action by the owner may be reconstructed in-place if a permit is obtained from the Code Enforcement Officer or the Planning Board (in cases where the structure was located in the Shoreland Overlay or Resources Protection Overlay Zone) within twelve (12) months of the established date of~~ damage or destruction.

E. In determining whether the structure reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or Code Enforcement Officer must consider, in addition to the criteria in Section 16.7.3.4.54, Nonconforming Structure Relocation, the physical condition and type of foundation present, if any.

16.7.3.5.37 Nonconforming Use Expansion.

Expansion of a nonconforming use ~~to of~~ any building structure or land area other than that occupied as such when created is not permitted with the following exceptions:

A. ~~uses in conformity with Chapter 16.7; and is not permitted.~~

~~A.B.~~ nonconforming residential uses located within the Resource Protection Overlay, or Shoreland Overlay Zone with Planning Board approval, may expand by thirty (30) percent or less of the structure, in floor area or volume, during the lifetime of the structure if the applicant can prove the proposal is consistent with the review standards in Section 16.3.2.17D.2.

16.7.3.5.68 Nonconforming Structure Change of Use Change – Review Authority and Evaluations.

The reviewing authority per subsections A B. and C below, may require evaluations be prepared by a person certified and/or qualified to perform the required evaluation. It is the burden and responsibility of the applicant to bear the costs for such evaluations. In the event there are existing official maps, data and/or reports for general use, the applicant is encouraged to submit copies of these documents to the reviewing authority. In determining that no greater adverse impact will occur, the applicant may be required to submit an evaluation in writing regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

A. Administratively. The Town Planner and the Code Enforcement Officer may approve the change of use of a nonconforming structure where it can be deemed the proposed use is a conforming use and the proposed use does not impact a water body, tributary stream, or wetland. See Section 16.4.3.5.

B. By Board of Appeals. Outside the areas regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, an existing nonconforming use may be changed to another nonconforming use with approval of the Board of Appeals provided the proposed use is not more nonconforming.

C. By Planning Board. Within areas regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, an existing nonconforming use may be changed to another nonconforming use with the approval of the Planning Board per Section 16.7.3.5.2, provided the proposed use has no greater adverse impact on any water body or wetland, or on the subject and adjacent properties and resources, including water dependent uses in the Commercial Fisheries/Maritime Uses Overlay Zone than the former use, as determined by the Planning Board. Within the area regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, the determination of no

16.7.3.5.9 Nonconforming Lots of Record.

A. Nonconforming Lots: A nonconforming lot of record as of the effective date of this Code or amendment thereto, may be built upon without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership and all provisions of this Code except lot size and frontage can be met. Relaxation of dimensional requirements excluding land area or frontage may be obtained only by miscellaneous variation request to the Board of Appeals. In any district, notwithstanding limitations imposed by other sections of this Code, single noncontiguous lots legally created when recorded may be built upon consistent with the uses in the particular zone. These provisions apply even though such lots fail to meet the minimum requirements for area or width, or both, which are applicable in the zone, provided that yard dimensions and other requirements, not involving area or width, of the lot conform to the regulation for the zone in which such lot is located. Relaxation of yard and other requirements not involving area or width may be obtained only through miscellaneous variation request to the Board of Appeals.

B. Contiguous Built-Upon Lots. If two or more contiguous built-upon lots or parcels are in single ownership of record at the time of adoption or amendment of this Code and if all or part of the lots do not meet the dimensional requirements of this Code, and if a principal use exists on each lot, the nonconforming lots may be conveyed separately or together, providing the State Minimum Lot Size Law (12 M.R.S. §4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with. If two or more contiguous lots or parcels were in single or joint ownership of record on or

before July 13, 1977 and have remained in the same ownership, except in the case of death, and if a combination of such lots or a portion thereof constitutes a lot of conforming size, such combination is recognized to be a single conforming lot for the purposes of this Code. If any of these lots do not individually meet the dimensional requirements of this Code or subsequent amendments, and if one or more of the lots is vacant or contains no principal structure, the lots must be combined to the extent necessary to meet the dimensional requirements of the zone. This subsection does not apply:

1. to any Planning Board approved subdivision for which an approved plan was recorded in the York County Registry of Deeds on, or before July 13, 1977;
2. if two or more contiguous lots are under the same ownership, except in the case of death, at least one of which is nonconforming, and were recorded in the York County Registry of Deeds on or before July 13, 1977;
3. if one or more of the contiguous lots is served by a public sewer, or can accommodate a subsurface sewage disposal system in conformance with this Code Section 16.8.7.1 – Septic Waste Disposal, and the State of Maine Subsurface Wastewater Disposal Rules; and
 - i. if each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
 - ii. if any lot(s) that do not meet the frontage and lot size requirements of Section 16.3.2.17D.1 are reconfigured or combined so each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

C. If two or more principal uses or structures existed on a single lot of record before July 13, 1977, on the effective date of this Code, each may be sold on a separate lot provided the Town Planner and Code Enforcement Officer determine that each resulting lot is as conforming as possible to the dimensional requirements of this Code.

~~16.7.3.5.10~~ — Contiguous Lots — Vacant or Partially Built.

~~If two or more contiguous lots or parcels were in single or joint ownership of record on or before July 13, 1977 and have remained in the same ownership, and if a combination of such lots or a portion thereof constitutes a lot of conforming size, such combination is recognized to be a single conforming lot for the purposes of this Code. If any of these lots do not individually meet the dimensional requirements of this Code or subsequent amendments, and if one or more of the lots is vacant or contains no principal structure, the lots must be combined to the extent necessary to meet the dimensional requirements of the zone. This subsection does not apply:~~

- ~~1. to any Planning Board approved subdivision for which an approved plan was recorded in the York County Registry of Deeds on, or before July 13, 1977;~~
- ~~2. if two or more contiguous lots are under the same ownership, at least one of which is nonconforming, and were recorded in the York County Registry of Deeds on or before July 13, 1977;~~
- ~~3. if one or more of the contiguous lots is served by a public sewer, or can accommodate a subsurface sewage disposal system in conformance with this Code Section 16.8.7.1 — Septic Waste Disposal and the State of Maine Subsurface Wastewater Disposal Rules; and~~
 - ~~i. if each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or~~
 - ~~ii. if any lot(s) that do not meet the frontage and lot size requirements of Section 16.3.2.17D.1 are reconfigured or combined so each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.~~

16.7.3.5.107 Nonconforming Parking or Loading Space.

A building structure and/or use which is nonconforming as to the requirements for off-street loading and/or parking spaces may not be enlarged or added to unless off-street space is provided sufficient to

satisfy the requirements of this Code for both the original and addition or enlargement of the building structure or use.

16.7.3.5.118 Nonconforming Steps.

The addition of steps and landings, exterior to the building structure does not constitute expansion. Such steps are not to be considered part of the structure for such determination. Step landings may not exceed three feet by three feet (3'x3') in size.

16.7.3.56 Nonconforming Structures in Shoreland and Resource Protection Overlay Zones.

16.7.3.56.1 Nonconforming Structure Expansion.

A non-conforming nonconforming structure may be added to, or expanded, after obtaining Planning Board approval and a permit from the Code Enforcement Officer. Such addition or expansion must not increase the non-conformity of the structure and must be in accordance with the subparagraphs below.

A. After January 1, 1989, if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure will not be permitted to expand, as measured in floor area or volume, by thirty percent (30%) or more during the lifetime of the structure.

B. If a replacement structure conforms to the requirements of Section 16.7.3.5.1.A and is less than the required setback from a water body, tributary stream or wetland, the replacement structure will not be permitted to expand if the original structure existing on January 1, 1989, had has been expanded by 30% in floor area and volume since that date.

C. Whenever a new, enlarged expanded or replacement foundation is constructed under a non-conforming nonconforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Section 16.7.3.5-24.5.B, Nonconforming Structure Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 16.7.3.5.3.1.A, above, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it will not be considered to be an expansion of the structure.

16.7.3.56.62 Nonconforming Structure Change of Use Change.

~~C. By Planning Board. Within areas regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, a~~ An existing nonconforming use may be changed to another nonconforming use with the approval of the Planning Board provided the proposed use has no greater adverse impact on any water body or wetland, or on the subject and adjacent properties and resources, including water dependent uses in the Commercial Fisheries/Maritime Uses Overlay Zone than the former use, as determined by the Planning Board. Within the area regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, for the determination of no greater adverse impact, the Planning Board may require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

Article IV. Waivers

16.7.4.1 Objectives Met, Waiver Authorization.

~~In granting modifications or waivers, the Planning Board must require such conditions as will, in its judgment, substantially meet the objectives of the requirements so waived or modified. Where the Planning Board finds, due to special circumstances of a particular plan, certain required improvements do not promote the interest of public health, safety and general welfare, or are inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed development, upon written request, it may waive or modify such requirements, subject to appropriate conditions as determined by the Planning Board.~~

16.7.4.2 Objectives Secured.

~~In granting modifications or waivers, the Planning Board must ~~shall~~ require such conditions as will, in its judgment, secure substantially the objectives of the requirements so waived or modified.~~